

OCT 20 2005

**In the United States Patent and Trademark Office**

Appellants:	Fung-jou Chen et al.	Docket No.:	13,042.4
Serial No.:	10/042,822	Group:	3761
Confirmation No.:	9638	Examiner:	J. F. Stephens
Filed:	January 8, 2002	Date:	October 20, 2005
For:	DUAL-ZONED ABSORBENT WEBS		

**Appeal Brief Transmittal Letter**

Mail Stop Appeal Brief - Patents  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37, transmitted herewith is an Appeal Brief pursuant to the Notice of Appeal which was mailed on September 22, 2005.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), which is due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

FUNG-JOU CHEN ET AL.

By: 

Gregory E. Croft

Registration No.: 27,542

**CERTIFICATE OF TRANSMISSION**

I, Judy Garot, hereby certify that on October 20, 2005 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Judy GarotSignature: RECEIVED  
OIPE/IAP

OCT 24 2005

RECEIVED  
CENTRAL FAX CENTER

OCT 20 2005

**In the United States Patent and Trademark Office**

Appellants: Fung-jou Chen et al.

Docket No.: 13,042.4

Serial No.: 10/042,822

Group: 3761

Confirmation No: 9638

Examiner: J. F. Stephens

Filed: January 8, 2002

Date: October 20, 2005

For: DUAL-ZONED ABSORBENT  
WEBS**Brief on Appeal to the Board of Patent Appeals and Interferences**Mail Stop Appeal Brief - Patents  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of the **Final Rejection** of claims 36-37 and 40-48 which was mailed on June 29, 2005.

On September 22, 2005, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on November 22, 2005.

---

**Real Party in Interest**

The present Application has been assigned to the Kimberly-Clark Worldwide, Inc.

---

**Related Appeals and Interferences**

There are no known related appeals and/or interferences.

---

**Status of the Claims**

Claims 36-37 and 40-48 remain in the application with claims 36-37 and 40-48 being finally rejected. Claims 1-35 and 38-39 have been cancelled.

---

**Status of Amendments Filed Subsequent to Final Rejection**

No Amendments After Final Rejection have been filed.

10/24/2005 CNGUYEN 00000061 110875 10042822

01 FC:1402 500.00 DA

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

---

**Summary of the Invention For Each Independent Claim**

Independent Claim 36, which is the sole independent claim under appeal, is a method for producing an absorbent web having a dry feel when wet. The method includes a step of preparing an inherently hydrophilic basesheet containing papermaking fibers and having elevated and depressed regions on an upper surface, and depositing hydrophobic matter preferentially on the elevated regions of the upper surface of the basesheet. The resulting basesheet has a Wet Compressed Bulk of about 5 cc/g or greater, which enables the absorbent web to maintain a high fluid capacity that is less likely to be squeezed out of the web when compressed. (See, for example, Example 2 of the specification at page 53, line 16, to page 55, line 9).

---

**Statement of Each Ground of Rejection Presented For Review**

The specification stands objected to under 37 CFR 1.71 for failing to adequately teach how to make and/or use the invention.

Claims 36, 37 and 40-48 stand finally rejected under 35 U.S.C. 112, first paragraph, as failing to disclose the best mode contemplated by the inventor.

Claims 36, 37 and 40-48 stand finally rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 5,763,044 to Ahr et al.

---

**Argument**

**1. Objection to the specification under 37 CFR 1.171.**

In the Final Rejection mailed June 29, 2005, the specification has been objected to under 37 CFR 1.71 on the basis that it fails to adequately teach how to make and/or use the invention and that Appellants have not disclosed the best mode of practicing their invention. It is asserted that Appellant "has not disclosed one example of a combination of materials and structure that allow the claimed results to occur." It is also asserted that Appellants have not disclosed the best mode of practicing the claimed invention. Additionally, it is further asserted that making an invention consistent with the claims would involve undue experimentation and that Appellants have not given any guidance on how to make a web having the claimed results.

First with regard to the assertion that Appellants have not disclosed one example of the combination of materials and structure that allow the claimed results to occur, Appellants' Example 2 clearly does so. In particular, at page 53, line 16 to page 54, line 2 of the specification, Example 2 teaches how to produce a suitable absorbent web in accordance with the claimed invention. It is disclosed that the tissue basesheet is a "single-layer, single-ply tissue was made from unrefined

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

northern softwood bleached chemithermomechanical pulp (BCTMP) fibers" (page 53, lines 19-20), which is an example of an "inherently hydrophilic basesheet including papermaking fibers having an upper surface and a lower surface". The web of Example 2 is transferred to a throughdrying fabric (Lindsay Wire T116-3) (page 53, lines 29-30); the "T-116-3 fabric is well suited for creating molded, three-dimensional structures" (page 52, lines 3-4). Thus, this is an example of a basesheet where the "upper surface has elevated and depressed regions". This teaching is more than adequate to enable a papermaker of ordinary skill in the art to produce a web with elevated and depressed regions on a surface of the web. Example 2 further describes that the basesheet is treated with paraffin wax (page 54, lines 7-8), which is an example of "depositing hydrophobic matter preferentially on the elevated regions of the upper surface" of a basesheet. The specification teaches that the basesheet of Example 2 had a Wet Compressed Bulk value of 9.65 cc/g (page 54, lines 4-6), which is an example of a basesheet having a "Wet Compressed Bulk of about 5 cc/g or greater" as claimed. Thus, the assertion that the specification does disclose "one example" of the structure and materials that would allow the claimed results to occur is inaccurate.

Moreover, the general assertion that the specification fails to adequately teach the claimed invention is completely unfounded in light of the thorough teachings provided by Appellants in 64 pages of specification, 17 examples and 19 figures. A more general description of making a suitable basesheet is disclosed at page 4, line 8 through page 5, line 20. A preferred method of making a suitable basesheet is described beginning at page 37, line 16. Similarly, a more general description of depositing the hydrophobic matter onto the basesheet is described at page 5, line 21 through page 6, line 13. More detailed teachings of suitable hydrophobic materials is disclosed beginning at page 41, line 28. Additional teachings of the various elements of the claimed invention are further described throughout the specification and drawings. Therefore the assertion that the specification fails to adequately teach the claimed invention is clearly erroneous.

It is further asserted that the specification fails to disclose the best mode. There is no proper basis for this assertion. That which constitutes the best mode contemplated by the inventors is based solely on the inventors' state of mind at the time the application was filed. With all due respect, the Examiner has no basis to assert such an objection since the Examiner has no facts regarding what the Appellants considered to be the best mode at the time their application was filed. In light of the exhaustive disclosure of the various elements of the invention in the specification, it seems clear that Appellants have not withheld any information, much less the disclosure of the best mode. Furthermore, Appellants have stated on the record in their previous response that the specification discloses the best mode contemplated by Appellants. Therefore this basis for objection is without merit.

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

With regard to assertion that Appellant "has not given any guidance as to how to make a web that would have the claimed results", it believed that the foregoing discussion with respect to the thorough teachings of the specification adequately addresses this point, which is unfounded.

**2. Rejection of claims 36, 37 and 40-48 under 35 U.S.C. §112, first paragraph.**

All of the claims stand rejected for failing to disclose the best mode contemplated by the inventors on the basis that there is no example in the specification that would provide the claimed results. As an initial matter, there is no requirement that an applicant provide a working example in order to satisfy the best mode requirement. Therefore, the inference that the best mode of practicing the invention is withheld when a working example is not present is not proper. Nevertheless, as discussed above with regard to the same objection to the specification, Appellants have disclosed their best mode and have provided a working example. Accordingly, this basis for rejection is not proper.

**3. Rejection of claims 36, 37, 40-42, 44, 45 and 47 under 35 U.S.C. §103(a).**

Claims 36, 37 and 40-48 stand rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 5,763,044 issued to Ahr et al. With respect to independent claim 36, it is asserted that Ahr et al. discloses a method for producing an absorbent web having a dry feel when wet comprising the steps of preparing an inherently hydrophilic basesheet comprising papermaking fibers where the basesheet has an upper surface and a lower surface, the upper surface having elevated and depressed regions, and depositing hydrophobic matter preferentially on the elevated regions of the upper surface of the base sheet. It is asserted that it would be obvious to provide the absorbent web of Ahr et al. with a Wet Compressed Bulk of about 5 cc/g or greater by optimizing the amount of temporary wet strength additive in the web (col. 5, lines 20-30) since the structure of the web is similar to that of Appellants' invention.

However, as disclosed in the Abstract of Ahr et al., Ahr et al. is directed to webs that are dispersible and flushable. The incorporation of temporary wet strength resins into the web provides a balance between mechanical integrity and dispersibility during disposal (col. 5, lines 20-32) of the web. Those of ordinary skill in the art would understand that a web having good dispersibility when it is wetted is a feature that is contrary to the desired wet resiliency, as defined by the Wet Compressed Bulk test, of Appellants' invention. More particularly, a web which is intended to lose its wet strength a short time after being wetted as disclosed by Ahr et al. would not have a high Wet Compressed Bulk value as claimed by Appellants. In this regard, it should be noted that in Appellants' description of the test method for Wet Compressed Bulk, approximately 3-4 minutes elapse between initial wetting of the test sample and the application of the compressive load. This is much, much longer than the time

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

necessary to maintain the integrity of a toilet tissue during use prior to being flushed, which is on the order of a couple seconds. Therefore one of ordinary skill in the art would not expect the tissues of Ahr et al. to have the temporary wet strength sufficient to withstand the time necessary to carry out the Wet Compressed Bulk test. Furthermore, Ahr et al. teaches a preferred fiber furnish that includes about 90 percent eucalyptus fibers (col. 4, lines 34-44). Eucalyptus fibers are well known in the art as being short in length and useful for softness and flexibility, as opposed to providing wet resiliency as required for Appellants' claimed method. Therefore, there is no suggestion, based on the teachings of Ahr et al., to modify the web of Ahr et al. to increase its wet resiliency sufficient to achieve the Wet Compressed Bulk levels claimed by Appellants, namely about 5 cc/g or greater. Therefore, Appellants believe that Independent claim 36 is patentable over the Ahr patent.

With respect to dependent claims 37 and 40-48, these claims are believed to be patentable based on their dependency from claim 36. However, with respect to dependent claims 43 and 46, the Final Rejection acknowledges that Ahr et al. does not disclose the exact amount of hydrophobic matter attached to the upper surface or the Rewet value. Nevertheless, it is asserted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr et al. with the claimed amount of synthetic fibers attached to the upper surface and the claimed Rewet value.

However, with respect to dependent claim 43, there is no suggestion in Ahr et al. for providing "synthetic fibers fixedly attached to the upper surface of said basesheet such that about 50% or less of the surface area of the upper surface is covered with the synthetic fibers" as claimed by Appellants. The portion of Ahr et al. cited in the Final Rejection (col. 5, lines 59-60) does not teach or suggest this aspect of the present invention.

With respect to claim 46, the Final Rejection acknowledges that Ahr et al. does not disclose the claimed Rewet value of 0.6 g or less. As disclosed in Appellants' specification at page 12, lines 26-28, the Rewet value is a measure of the amount of liquid water which can be wicked out of a moistened web to wet the skin. Because Appellants' claimed method is directed at a basesheet having a high Wet Compressed Bulk, such basesheets inherently resist giving up liquid water under load as defined by the Rewet test. Since Ahr et al. describes webs which are fluid pervious, dispersable and flushable, they would be expected to exhibit high Rewet values. Accordingly, it would not be obvious to modify such webs to provide them with Appellants' claimed Rewet value of 0.6 g or less. Therefore, it is Appellants' position that Ahr et al. teaches away from webs having the characteristics of their claimed methods.

For these additional reasons, Appellants submit that the methods of claims 43 and 46 are not obvious from the teachings of Ahr et al.

OCT 20 2005

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

---

**Conclusion**

For the reasons stated above it is Appellants' position that the rejection of claims 36-37 and 40-48 has been shown to be improper and should be reversed by the Board.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3616

Respectfully submitted,

FUNG-JOU CHEN ET AL.

By: 

Gregory E. Croft

Registration No.: 27,542


**CERTIFICATE OF TRANSMISSION**

I, Judy Garot, hereby certify that on October 20, 2005 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Judy Garot

Signature:



K-C Docket No.:13,042.4  
Serial No.: 10/042,822

---

**Appendix – The Claims On Appeal**

The claims on appeal are:

1.-35. (Cancelled)

36. (Previously Presented): A method for producing an absorbent web having a dry feel when wet comprising the steps of:

- a) preparing an inherently hydrophilic basesheet comprising papermaking fibers and having an upper surface and a lower surface, said upper surface having a surface area and having elevated and depressed regions; and
- b) depositing hydrophobic matter on the elevated regions of the upper surface of said basesheet,

wherein said basesheet has a Wet Compressed Bulk of about 5 cc/g or greater.

37. (Original): The method of claim 36, wherein said step of preparing the basesheet comprises the steps of depositing an aqueous slurry of papermaking fibers on a foraminous web to produce an embryonic web; molding said web on a three-dimensional substrate; and drying said web.

38.-39. (Cancelled)

40. (Previously Presented): The method of claim 36 wherein said basesheet is a wet-laid tissue sheet.

41. (Previously Presented): The method of claim 36 wherein said web is an airlaid structure.

42. (Previously Presented): The method of claim 36 wherein the hydrophobic matter is discontinuous.



K-C Docket No.:13,042.4

Serial No.: 10/042,822

43. (Previously Presented): The method of claim 36 wherein said hydrophobic matter comprises synthetic fibers fixedly attached to the upper surface of said basesheet such that about 50% or less of the surface area of the upper surface is covered with the synthetic fibers.
44. (Previously Presented): The method of claim 36 further comprising hydrophobic matter on a portion of the lower surface of said basesheet.
45. (Previously Presented): The method of claim 36 wherein said elevated regions comprise from 5 to 300 protrusions per square inch having a characteristic height of at least 0.2 mm relative to said depressed regions.
46. (Previously Presented): The method of claim 36 wherein at least 30% of the upper surface of said basesheet remains substantially free of hydrophobic matter and said web has a Rewet value of 0.6 g or less.
47. (Previously Presented): The method of claim 36 wherein essentially all of said hydrophobic matter resides above a 50% material line of a characteristic cross-section of said web.
48. (Previously Presented): The method of claim 36 wherein the superficial basis weight of said hydrophobic matter is from about 1 to about 10 gsm and said basesheet has a basis weight of from about 10 to about 70 gsm.

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

---

**Evidence Appendix**

No Evidence Appendix is submitted herewith.

K-C Docket No.:13,042.4  
Serial No.: 10/042,822

---

**Related Proceedings Appendix**

There are no known related proceedings.